IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7300 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RAMNIKLAL POPATBHAI LADANI C/O BABULAL M MAVANI ADVOCATE

Appearance:

1. Special Civil Application No. 7300 of 2001

MR HS MUNSHAW for Petitioner No. 1

MR KISHOR M PAUL for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 26/03/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Munshaw for the petitioner and Mr. Paul for the respondent workman.

By way of this petition, the petitioner has

challenged the award made by the labour court concerned in Reference NO. 104 1996 dated 10th January, 2001 wherein the labour court concerned has directed the corporation to reinstate the respondent workman in service with continuity and with back wages for the intervening period. Mr. Munshaw has submitted that the respondent was working as a driver at Upleta and he was transferred from 10th October, 1995 to Junagadh Depot and was relieved on 11th October, 1995 but he has not reported for duty at Junagadh and remained absent and, therefore, he was served with a notice but inspite of such notice, he has not remained present and remained absent without prior permission and, therefore, he was dismissed from service after holding departmental inquiry against him wherein the authority has held that the charges levelled against the respondent were proved against the respondent. He has submitted that the labour court has erred in holding that the charge levelled against the respondent is not found to have been proved. He has submitted that the labour court has also erred in concluding that the departmental inquiry had proceeded ex parte against the respondent; the labour court has also erred in coming to the conclusion hat no opportunity was given to the respondent workman. He has also submitted that the labour court has also erred in not considering the past record of the respondent workman which was produced before the labour court. He has also submitted that the labour court ought not to have granted back wages while reinstating the respondent workman in service since the petitioner is a public body.

As against that, learned advocate Mr. Paul appearing for the respondent workman has submitted that the respondent was absent from duty from 17th October, 1995 in view of his sickness and necessary medical certificate and leave reports were sent to the concerned authority in time and and such certificate of sickness was also counter signed by the civil surgeon. This fact has been admitted by the reporter in his examination before the departmental authority that he had received certificate of one and half month which was counter signed by the civil surgeon. He has also submitted that the past record of the respondent is not bad and there is only one instance of his having remained absent and considering his length of service and such clean record, and, therefore, this court should not interfere with the award in question.

I have considered the submissions made by the learned advocates for the parties. The respondent was working as a driver at Upleta Depot and was transferred

by order dated 10th October, 1995 from Upleta to Junagadh and was relieved for joining at Junagadh Depot but he failed to report at Junagadh and remained absent and onthat basis, he was served with chargesheet dated 18th November, 1995 and thereafter, inquiry was fixed on 24th November, 1995 and it was adjourned to 15th December, 1995, then it was adjourned to 30th December, 1995 and then it was adjourned to 13th January, 1996 but this inquiry had remained ex parte. Once when the petitioner corporation has received report and medical certificate duly counter signed by the civil surgeon that the respondent is sick, in view of such sickness and receipt of sick report, the corporation ought not to have proceeded ex parte in the departmental proceedings against the respondent. It is necessary to note that the first inquiry was fixed on 24.11.1995 when the report of his sickness was already there on the record. On second occasion on 15th December, 1995 also, the respondent was sick and medical report was on record and same was the situation on the third occasion on 30th December, 1995. From these aspects of the matter, it is clear that it was within the knowledge of the corporation that the respondent was asking for granting leave and was not remaining present in view of his sickness. During the course of departmental inquiry, even the reporter has also admitted that he was in receipt of the medical report accompanied by the certificate of sickness duly signed by the civil surgeon. Inspite of this, the inquiry had proceeded ex parte against the respondent and in view of these factual aspects, the labour court has come to the conclusion that the charge levelled against the respondent has not been found to be proved. The labour court has also examined that in case of remaining absent after submitting leave report, in such case, punishment of dismissal from service is totally unjustified and is required to be set aside. Mr. Munshaw has not been able to point out that the competent authority has examined the civil surgeon for ascertaining the sickness of the respondent workman. He has also not been able to point out that the medical certificate of the respondent was not on record of if it was on record, then, it was incorrect. In view of these facts, according to my opinion, the labour court was right in coming to the conclusion that the punishment of dismissal was totally unjustified and was also right in setting aside the punishment of dismissal. In view of these factual aspects, the labour court was justified in reinstating the respondent workman. As regards back wages, the labour court has considered the deposition of the respondent workman at Exh. 41 wherein he has deposed that he remained unemployed during the intervening period

and he has not been able to secure any gainful employment inspite of attempts made by him. No evidence contrary to such evidence of the respondent has been produced by the Corporation that the respondent has been gainfully employed during the intervening period. Even before this Court also, Mr. Munshaw has not been able to point out that the respondent has worked elsewhere and has been earning something during the intervening period. Therefore, according to my opinion, the labour court was perfectly right in coming to the conclusion that the charge levelled against the respondent has not been proved and was also right in reinstating the respondent workman in service and has not committed any error in exercising the discretion in favour of the respondent workman under section 11A of the I.D. Act, 1947. Excepting one instance of his remaining absent in past, there is no other past record of the respondent wherein punishment of stoppage of three annual increment was imposed upon the respondent. IN view of these factual aspects, according to my opinion, the award made by the labour court does not require any interference of this Court. Mr. Munshaw has not been able to point out any jurisdictional error and/or procedural irregularity committed by the labour court. He has also not been able to point out any infirmity in the award made by the labour court. Therefore, there is no substance in this petition and the same is, therefore, dismissed. Rule is discharged. There shall be no order as to costs.

At this stage, Mr. Paul, learned advocate for the respondent workman has submitted that the award in question was made by the labour court on 10th January, 2001. While issuing rule on this petition, this Court has not granted any interim relief in favour of the petitioner corporation and yet the respondent has not been reinstated in service. He has further submitted that even the benefits under section 17B have also not been paid by the corporation to the respondent from the date of the award in question till this date and the respondent is out of service and, therefore, some suitable directions are required to be issued to the corporation to implement the award in question within some reasonable period.

Considering the request made by Mr. Paul, it is directed to the petitioner corporation to reinstate the respondent in service within one month from the date of receipt of copy of this order and to pay the back wages as awarded by the labour court from the date of dismissal till the date of his actual reinstatement within three months from the date of receipt of copy of this order.

26.3.2002. (H.K. Rathod,J.)

Vyas